

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5167 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MUKESH MANUBHAI GANDHI

Versus

GUJARAT WATER RESOURCES DEVELOPMENT CORPN.

Appearance:

MR MB GANDHI for Petitioner

MR YH VYAS for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 28/02/97

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The petitioner has made prayer for direction to the respondent to treat the petitioner as Junior Clerk in the administrative cadre and to give grade of 950-1500 from 17th May, 1992 when the petitioner completed five years of service. It has next been prayed that the respondents may be directed to treat the petitioner as Junior Clerk from the date of his appointment namely 19th May, 1987

and to give him the pay-scale of the said post on the basis of the principle of equal pay for equal work. In the alternative, the petitioner made a prayer for direction to the respondents to treat the petitioner as bore operator and to give him the said designation from 19th May, 1992 and the pay-scale of 1150-1500.

2. It is not in dispute that the petitioner was appointed on daily wages as helper (bore). The petitioner has come up with a case that the respondent has taken from him the work of Junior Clerk continuously from the date of appointment on daily wages as helper, but it is a disputed question of fact on which this court cannot hold any inquiry. Similarly, the claim of the petitioner that he should be taken to be as bore operator, is also not tenable as the petitioner has not been appointed on the post of bore operator on daily wages. This is also a disputed fact. Otherwise also both these claims of the petitioner cannot be accepted. Even if it is assumed that the respondents have taken from the petitioner the work of Clerk then at the most he could have been entitled for the difference of wages and not for the regularisation and the pay-scale of the post of Junior Clerk. The difference of wages could have been granted only when he establishes as a fact that he in fact has worked as a Junior Clerk and respondents have taken from him the work of Junior Clerk. It is a question of fact and it can only be decided after taking the evidence of the parties.

3. The Hon'ble Supreme Court in the case of State of Madhya Pradesh vs. M.V. Vyavsaya and Co. reported in 1997(1) SCC 156 held that where in a petition under Article 226 of the Constitution disputed question of facts involve, such writ petition should be dismissed at the threshold.

4. The second claim of the petitioner for regularisation and the pay-scale of the post of bore operator is also not tenable as it is not the case of the petitioner that he has worked as bore operator or the respondent has taken from him the work of bore operator. The petitioner has produced on the record a circular of the respondent dated 13th August, 1996. In this circular, the name of petitioner has been placed at Sr. No.167 and in Column No.12 thereof it has been mentioned that the petitioner has been appointed as Daily Wage Helper on 19th May, 1987 and he was appointed as work charged helper on 17th May, 1992. In column No.7 it has been mentioned that the petitioner has been taken as work-charged from 1st January, 1994. So there are

discrepancies in the said circular. In column No.12, the petitioner was stated to be taken as work-charged helper on 17th May, 1992 whereas in column No.7, the petitioner has been taken to be a work-charged helper from 1-1-1994.

5. In this view of the matter, the interest of justice will be met in case this writ petition is disposed of with the direction to the respondent to decide the claim of the petitioner of taking him as a work-charged helper and to pay him the pay-scale of work-charged helper from which date i.e. from 17th May, 1992 or 1st January, 1994. It is made clear that while deciding this question, the respondent has to take into consideration that the petitioner has filed this Special Civil Application before this Court on 30th July, 1992 and in case, this Court would have decided the matter then normally it would have allowed the benefit of the pay-scale in favour of the petitioner from the date of filing of the petition. The respondent may further take into consideration that the petitioner's claim to be given the benefit of the work-charged services as helper from the date from which the person who is junior to him as a daily wager helper has been appointed deserves consideration. This matter is to be decided by the respondent within a period of three months from the date of receipt of writ of this order. In case, the respondent decides to treat the petitioner as work-charged helper from 15th May, 1987 then he shall be entitled for all the consequential benefits follow there from only from 30-7-1992. In case, the respondent decides otherwise then a reasoned order is to be passed and copy of the same may be sent to the petitioner. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-